

## **Departing an Organisation – Redundancy and Settlement Agreements for Senior Executives and Managers during Covid-19\***

Covid-19 is having an impact on businesses around the world. This will mean that many individuals will face possible redundancy. This is at all levels of seniority. It includes senior executives and senior managers. As a senior executive or senior manager you will have been involved not only in the management of the company but also often in developing the business. You will likely have many years' service for that business. In this article we are looking at what you may need to be aware of and what issues are likely to arise in the coming months.

As Employment Law Solicitors with expertise and a wealth of knowledge and experience in this area we can give you practical advice on the options available to you. We are very much a straight talking firm. We will tell you exactly what your rights and options are. At the same time we fully understand the personal and professional issues which will affect you and this includes the very fact that you may have been selected for being at risk of redundancy.

Our first piece of advice is always that if you have an inclination that your post may be made redundant that you get appropriate legal advice early on. It is always better to be ahead of the game than reacting to a notification that your job is at risk.

Where redundancy is going to arise we can help in negotiating on your behalf to get the best possible severance package for you.

At the same time we can advise on whether the process being followed is both fair and legal and what options you have. There will be cases where it may be possible to challenge your selection for redundancy.

Our website has a contact form to enable you to get in touch with us.

### **Severance Packages and Settlement Agreements**

Where a senior executive or senior manager is being made redundant there is generally less consultation. At the same time there is an increased likelihood of a severance package together with a Settlement Agreement.

Business need to be very careful about stating that any individual is going to be made redundant without going through the correct

redundancy process. If you are a senior executive or senior manager and this happens then this does increase your ability to negotiate a severance package as the business may not have followed the correct legal procedures.

At the same time we are aware of the issue of reputational risk and the fact that as a senior executive or senior manager litigation may be the last thing that you want to get involved with. From our experience there is also a reputational risk for the business where there is any issue of unfair selection or not following correct procedures.

The use of Settlement Agreements is becoming popular. In such cases you will receive an enhanced severance payment. These Settlement Agreements are put in place on the basis that the business will protect itself from a future claim since you will be requested to waive your rights to bring any claim. These agreements also remove the need for lengthy consultation periods which is something which may appeal to many businesses during these times.

Irish Law is different than UK law. Many businesses, here in Ireland, mistakenly believe that they have the same protection as they would have in the UK as regards having a “confidential” discussion with you about being made redundant. There is no such confidential discussion right for a business in Ireland. Any discussions with you even if stated to be confidential are actually on the record. Once you are aware of this it can give you the upper hand in subsequent negotiations as the employer will not have followed fair procedures by making what a Court could determine as a pre determination of matters prior to fair processes being put in place.

### **Obtaining Legal Advice**

For a Settlement Agreement to be enforceable to restrict your right to bring any claim into the future your employer must make sure that you obtained legal advice, being independent legal advice before signing any Settlement Agreement. This is set out in the case of Dawn Conaghty and Malahide Community School. This is to protect you as you will be waiving your employment rights. It also of course protects the business from any claim by you.

Our team here can advise you as a senior executive or senior manager who may be facing redundancy of your rights and to discuss all

options including Settlement Agreements and severance packages, to ensure the best outcome in your personal circumstances.

Our reputational risk and crisis management service is provided only to Senior Executives and Senior Managers. It is a bespoke service for senior executives and senior managers.

### **Should you agree to a Settlement Agreement?**

A Settlement Agreement will not work in every situation. We can advise you on your particular circumstances. All issues must be considered, as we know from our experience, to make sure that you are getting the best possible outcome.

There will be times when the severance package or agreement being put to you may not be in your best interests. There will be times when the severance package being produced is not sufficient and there are times when you may have to consider the issue of legal proceedings as an alternative. Again, this is an issue which we will advise you on. However, at all stages, any decision whether to accept a severance package or to issue proceedings is a matter solely for you to decide. We will set out the options and give our advice but the ultimate decision will always be yours.

As a senior executive or senior managers there are going to be issues relating to Restrictive Covenants which may need to be renegotiated in a redundancy situation to ensure that you, going forward, will be in a position to obtain new employment. There will be times when the existing Restrictive Covenants in your Contract of Employment may be too restrictive.

There may be times when you have raised an issue in the business in raising a grievance to a protected disclosure or to a situation where there can be unfair selection for redundancy. If the redundancy is for any reason other than a reorganisation of the business then there are significant legal issues which you will need to get legal advice on.

### **Protecting your Interests**

All issues covered by any Settlement Agreement must be reviewed to ensure that they best protect your interests. What is best in your situation will often depend on how quickly you feel you will find another job, whether you wish to have a clean break or lump sum, or,

continued employment and benefits. These are all points of negotiation depending on your circumstances.

## **Restrictive Covenants**

As a senior executive or senior manager there will often be clauses in Contracts of Employment relating to issues of competition and restrictive covenants.

In some cases this will form part of the negotiations with your current employer to see to what extent these can be reduced or removed in the circumstances.

## **Bonuses and Share Option Agreements**

These are increasingly creating issues relating to any Severance Agreement. In particular share options are written in such a way that the benefits only vest after a number of years. At the same time you may have acquired significant potential benefits which have not as yet vested. These all form part of any negotiation. Depending on the particular circumstances it may be that their value is such that unless an agreement can be reached that some form of legal action against the employer company may be necessary particularly when these are of a significant value.

## **Alternatives to Redundancy**

Where there is a risk of redundancy it is worth remembering that there are other options other than redundancy which should be considered before any decision is made to make you redundant being;

- Being considered for other roles in the business. There is a legal right for you to have this done.
- A pay cut. This may not be very easy to accept but at times if it is important to maintain employment it is an issue which may form part of any discussions.
- A reduction in days or hours worked.
- Being moved to a different area of the business.

It must be remembered that an employer must consider alternatives to redundancy and if you are prepared to consider any of these routes than it is worth discussing these options. If discussing these options of course it is important to have obtained prior legal advice. The

reason is that these discussions will very much be deemed, if subsequently litigation was to arise, as being on the record discussions even if you have been told that they will be confidential.

## **Getting Advice**

You will find various Guides on our website [www.grogansolicitors.ie](http://www.grogansolicitors.ie) which may be of assistance to you in the section headed Reputational Risk and Crisis Management.

We can be contacted by simply sending an email to [info@grogansolicitors.ie](mailto:info@grogansolicitors.ie) or using our contact form on our website.

## **Your dealings with us**

All communications and discussions with us are absolutely confidential. Before discussing any issue with you we will of course undertake a conflict check. Where there is no conflict then in those circumstances we will arrange to furnish you with what is termed a Section 150 notice which will set out the fees and basis under which we will be advising you. Everything which you say to us will be kept fully confidential at all times. To ensure that you will get the best possible service from this firm there will always be two Solicitors working on your case. Effectively, we operate a four eye process. It means if one Solicitor, with whom you will normally have the main contact, is not available there will be a second Solicitor available who is fully briefed who can take up the file and run with it immediately. We are very conscious of the fact that in cases involving you as a senior executive or senior manager confidentiality is imperative. We are also aware of the fact that if a Severance Agreement is to be reached it will often be reached in a very short period of time and therefore it is imperative that there is somebody always available to deal with your case, that we can ensure that you get all appropriate tax and pension advice, in addition to legal advice, so that any severance, if it is to go ahead, can be done in an efficient and effective way while also protecting your reputation.

**\*Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

**\*In contentious cases a solicitor may not charge fees or expenses as a proportion or percentage of any award or settlement.**